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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re the Conservatorship of EDWARD W. PAULSON.	
SUZANNE P. HORTON et al., Coconservators and Appellants, v. LYNN A. STARMANN, Objector and Respondent.	G031062 (Super. Ct. No. A-198976) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard O. Frazee, Judge. Affirmed.

The Law Office of Richard A. McFarlane and Richard A. McFarlane for Coconservator and Appellant Susan P. Horton.

James L. Kohl for Coconservator and Appellant Calvin Sheline.

Fullerton, Lemann, Schaefer & Dominick and Thomas W. Dominick for Objector and Respondent.

* * *

Susanne P. Horton and her brother, Calvin Sheline, separately appeal from a judgment that surcharged them for mismanaging the funds of their conservatee Edward William Paulson, who is now deceased. Horton complains that: (1) the trial court erred in taking judicial notice of court records in a separately filed will contest regarding Paulson's estate; and (2) the court should have stayed the trial while the judgment in the will contest was being appealed. Sheline raises two more issues: (1) he was deprived of due process as an in propria persona litigant; and (2) insufficient evidence supports the charges levied against him. In addition, both conservators assert the court improperly ignored a crucial exhibit, warranting reversal. Finding all of the above arguments lack merit, we affirm.

I

During his last few years of life, Paulson suffered from numerous physical and mental limitations and required extensive medical care. In 1999, when Paulson was 86 years old, Horton petitioned to be appointed his conservator. In her petition, Horton alleged that Paulson was bedridden, a paraplegic as a result of spina bifida, had limited use of his arms, suffered from heart disease (he had undergone a quadruple heart bypass five years earlier), and was experiencing severe dementia and memory failure. Horton explained she had met Paulson 15 years earlier when she was assigned to be his visiting nurse and over time they became friends. When Paulson's wife died suddenly, county workers moved Paulson to a skilled nursing facility. Horton claimed that Paulson was not receiving adequate care there and was unnecessarily suffering from bed sores. She concluded, "[I]t is urgent that a conservator be appointed for Mr. Paulson immediately so that someone can arrange for him to return home, and have access to his funds to pay for in-home care."

On September 21, 1999, the court appointed Horton as Paulson's temporary conservator. The court initially rebuffed Horton in her attempt to become a permanent conservator because she did not have the necessary credit and could not obtain the

financing to secure the required bond. Sheline, a certified public accountant (CPA), had a stronger financial rating than Horton, and he agreed to help her get the bond. In February 2000, the conservatorship of Paulson's person and estate became permanent, with Sheline and Horton serving as coconservators.

Paulson died on May 4, 2000. Soon thereafter, in San Bernardino, Horton filed a petition to probate a new will she claimed Paulson executed two days before his death. It purportedly gave all his assets to her. Paulson's niece, Lynn Starmann, and her cousin, Carole Thatcher, contested the will. All did not go as planned for Horton. The court imposed discovery sanctions against Horton and dismissed her petition. She filed an appeal from the court's final judgment.

Meanwhile, the coconservators hired attorney James C. Harvey, and filed their "first and final account" of the conservatorship in January 2001. Starmann filed an objection. A few months later in April, Horton revised the accounting and filed a supplemental version. Sheline did not verify this supplement.

In June, the court ordered the coconservators to try again and file a more complete supplemental accounting before July 27, 2001. The coconservators fired their attorney, but acting in propria persona they failed to meet the deadline set by the court. In September, the court issued a minute order stating that an accounting must be filed by October 3, 2001, and there would be no further continuances granted. In addition, the court set an order to show cause (OSC) why Sheline should not be compelled to account.

Horton hired a new attorney and filed a supplemental accounting, however again it was verified only by her and not by Sheline. Starmann filed another objection, asserting there had been unauthorized disbursements, misappropriated funds, and reporting mistakes. The court set a trial date for March 6, 2002.

One month before trial, Horton changed attorneys again and hired Lawrence Harrison. Sheline decided to continue in propria persona. On the first day of trial, Sheline asked the court if it was "aware of the final accounting as of February 4,

2002." The court and Starmann's counsel said they did not know the supplement had been filed. The court soon discovered the paperwork had been filed but designated it as an exhibit because it was not properly formatted as a supplemental accounting. Initially, the court stated it would declare a mistrial. After much discussion, it marked the stack of paperwork as exhibit 58 and made it available to counsel with the understanding counsel would decide whether it should be reformatted, and filed as a supplemental accounting. The court stated the trial would resume on June 18, 2002.

The coconservators did not reformat the documents or attempt to file any other supplemental accountings. The trial lasted four days and the court heard testimony from several witnesses. After considering the parties arguments, the court stated it "read and considered the file in this matter, the exhibits, [and] the evidence presented at the trial." Based on its evaluation of those items and the accountings, the trial court surcharged Horton $209,649 for "systematically loot[ing] the estate of the conservatee" during her time as temporary conservator and permanent coconservator. The trial court also surcharged Sheline $175,637 for being "grossly negligent in his management of the conservatorship estate."

II

On the first day of trial, Starmann requested that the court take judicial notice of several documents filed in the San Bernardino will contest.[1] Horton's counsel, Harrison, stated he was aware of the documents and could explain "why they are prejudicial in [his] opening statement." He advised the court, "I will not move to exclude them at this time."

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[1] Specifically, Starmann requested that judicial notice be taken of: (1) the court decision dated January 15, 2002; (2) the court's order regarding terminating and monetary sanctions for abuse of discovery; (3) the judgment and order for probate entered February 26, 2002; and (4) E. Avery Crary's declaration.

As an aside, Harrison noted the San Bernardino matter was being appealed and consequently all the probate orders had been stayed. Starmann's counsel disagreed, asserting a stay request had been filed but not yet ruled on. The court stated, "I would be shocked if a court stays administration of an estate pending appeal. That could be five years from now. . . . [¶] So the court will take judicial notice of all of the documents submitted and counsel's representation. There's been no stay order to any court. I don't know how that could stay me in any event. It is a court file. That doesn't go away."

On appeal, Horton acknowledges that ordinarily judicial notice may be taken of the records of any California court. (Evid. Code, § 452, subd. (d).) Citing to *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063, she asserts the general rule does not apply when the records are either irrelevant or more prejudicial than probative. (See also Evid. Code, § 352.) Horton claims such was the case here: She explains that the records were irrelevant because "the two cases involve totally different legal theories and different facts." She maintains that because the San Bernardino case was dismissed "on a technicality," it has nothing "which might make any facts at issue in the Orange case more or less likely." As for prejudice, she notes the record contains many hearsay statements. And she adds, "[T]he fact that the San Bernardino case was dismissed, albeit on a technicality, is prejudicial . . . in the usual etymological sense of 'pre-judging.' By receiving and considering [those] records, the trial court pre-judged [Horton's] case against her."

Unfortunately, none of these arguments were raised in the court below. While Horton's counsel indicated he thought the records were prejudicial, he declared he would "not move to exclude them." The only issue he discussed was whether the probate judgment was final or stayed. As for this objection, the court properly determined it could take judicial notice of records in a *pending* court action. (See *Low v. Golden Eagle Ins. Co.* (2002) 99 Cal.App.4th 109, 112, fn. 2.) The contentions Horton now raises on appeal were "neither considered nor ruled upon by the trial court. It is axiomatic that

arguments not asserted below are waived and will not be considered for the first time on appeal. [Citations.]" (*Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3.)

III

Next, Horton maintains the court should have granted her motion to stay the trial pending the resolution of her appeal in the San Bernardino case. She asserts, "The trial court summarily denied the motion, without comment." We have carefully reviewed the record and discovered the court never considered or ruled on a stay request.

Horton cites to a page in the reporter's transcript where the trial court purportedly denied her motion to stay. The record shows the court denied only an *ex parte application for an order shortening time* to bring a motion to stay. As Horton noted in her written application, to obtain the *ex parte order* she did not need to "prove the merits of the motion" but rather establish there was good cause to shorten notice for the motion. Indeed, California Rules of Court, rule 379, requires ex parte applicants to make an affirmative factual showing that "exceptional circumstances" exist "that justify shorter notice." The court determined Horton failed to meet this burden. Horton does not dispute this ruling on appeal. Her purported motion to stay was never considered, much less filed, in the court below. Her argument the motion nevertheless should have been granted is simply absurd. We need not say more.

IV

Sheline and Horton criticize the trial court for "ignoring" exhibit 58, which they maintain contained a "much fuller accounting" than their previously filed accountings. They assert the court did not appear "interested" in the exhibit as it did not specifically refer to it when making its ruling. Sheline asserts the exhibit contains evidence that would reduce his liability. Horton simply states the evidence had probative value and the court abused its discretion by *excluding* it. In light of the record, we find the arguments disingenuous.

The coconservators filed several supplemental accountings in this case. The first "final" accounting filed in January 2001, was supplemented in April and in October. Horton and Sheline argue they submitted "a much fuller accounting" in February 2002 (that was marked exhibit 58) and it was submitted in time for the March trial.

Apparently, the coconservators did not think we would read the reporter's transcript. It is plainly evident from the record why the court did not consider exhibit 58 to be the final supplemental accounting. In short, the paperwork was not filed in an acceptable format (as mandated by Probate Code section 2610 et seq.).

As noted by the trial court, the stack of documents was missing a caption, case number or any other statement indicating it was an accounting. It was described on the record to be a three to five inch thick stack of paperwork bound with a rubber band. It lacked proof of service, and as pointed out by opposing counsel, the package contained a general ledger rather than the various financial schedules required by the Probate Code. The paperwork submitted in February was filed long past the court's October deadline for supplemental accountings. Indeed, the packet was filed with a "notice of lodging," because the court clerk reasonably assumed it was an exhibit.

After stopping the trial to allow Starmann an opportunity to review the packet and depose Horton, the court asked the coconservators if they intended the packet to be an exhibit or filed as a supplemental accounting. Horton's counsel, Harrison, asserted the packet was a supplemental accounting and he was willing to make any necessary format changes so that it could be properly filed. After a long discussion on the record, the court determined the packet would be "marked as an exhibit in evidence" but counsel was free to reformat the exhibit to correct its defects and have it designated the final supplemental accounting before the trial resumed.

Harrison repeatedly pledged to have the packet correctly filed as soon as possible. For example, he stated, "My secretary will be at the clerk's office at 9:00

tomorrow morning finding the proper form. And the proper form will be followed, and you will have it by 48 hours from the time I am speaking." He assured the court, "I want to make sure that all previous errors in this case are covered. I want to make sure that it covers it in the proper form, that counsel has it in the proper form, that I see what happened to every asset to every cent, because he has a right to see that; and the court has the right to see it, too."

True to his word, the trial judge marked the packet as exhibit 58. The same cannot be said for Harrison or the coconservators. They did not attempt to reconfigure the exhibit or file a final supplemental accounting that addressed the problems discussed by the trial court. When the trial resumed, the exhibit was admitted into evidence and given the title "'supporting documents to accounting.'" By their omission, the coconservators implicitly accepted the court's decision to designate the package as a trial exhibit.[2]

Nevertheless, on appeal, the coconservators believe the court should have treated exhibit 58 the same as a final supplemental accounting. They are wrong. The form and content of accountings are proscribed by statute. (Prob. Code, § 2610 et seq.) Conservators must "account for the property of the conservatee" by preparing a detailed report of all financial transactions. (See *Johnson v. Kotyck* (1999) 76 Cal.App.4th 83, 89; Prob. Code, § 2620.) Specifically, the accounting must contain several detailed schedules separately showing: (1) noncapital receipts of income or principal; (2) gains on sales; (3) dispursements; (4) allowance and support payments; (5) losses on sales; and

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[2] Horton and Sheline asked the trial court to transmit all original trial exhibits to this court. Starmann filed an objection, arguing the exhibits should not be considered by this court. The day before oral argument, Sheline moved to have this court examine several more exhibits not previously transmitted by the trial court. Because the contents of the exhibits were not relevant to our decision on appeal, the motion is denied and the objections are overruled as moot.

(6) the property on hand at the end of the accounting period. (Prob. Code, §§ 1061 &1062.)

After the accounting is filed, the court sets a hearing and notice must be given at least 15 days before the date of the hearing. (Prob. Code, § 1460.) This allows any interested person to file objections to the accounting *before* the hearing. At the hearing, the court evaluates the accounting in light of the objections and may surcharge a conservator for improper payments or for other wrongful acts that damage the estate. (Prob. Code, §§ 2401.3, 2401.5, & 2625.)

We find no authority, and the coconservators cite to none, holding that a conservator can ignore the Probate Code's detailed requirements regarding accountings. The conservatorship statutes are designed to protect the conservatorship estate for the benefit of the conservatee and "persons" who will inherit the estate. (*Johnson v. Kotyck, supra,* 76 Cal.App.4th at p. 89.) Indeed, one of the probate court's most important goals is "to insure that ordinary care and diligence has been exercised by the conservator in the management and control of the estate." (*Conservatorship of Coffey* (1986) 186 Cal.App.3d 1431, 1439.) It is entirely reasonable to require conservators to submit accountings in the standardized format that the court (and probate counsel) are familiar with and understand. In this case, because exhibit 58 was not prepared to look like an accounting, Starmann could not file any specific objections to it for the court to consider before the hearing. We find the court properly deemed the package to simply be an additional piece of evidence, to be submitted and considered during the trial along with all the other evidence.

We find no basis in the record for the coconservators' contention the exhibit was unduly ignored, or worse, improperly excluded. There is much evidence to the contrary. As noted by Horton and Sheline in their briefs, "some hours of direct and cross-examination referred to exhibit 58 as a focal point." There is no dispute the exhibit was formally admitted into evidence. There is simply no reason to believe the court

failed to weigh and consider this evidence and the related testimony. Indeed, when making its ruling the court specifically noted that it considered "the file in this matter, *the exhibits*, the evidence presented at trial." (Italics added.) Because no statement of decision was requested, the court was under no duty to further describe the evidence in any great detail. Contrary to the coconservators' suggestion, it cannot be assumed the court ignored exhibit 58 simply because it failed to specifically mention it when making its final ruling.

Finally, we note that although both conservators assert exhibit 58 contained crucial mitigating evidence, neither party offers any examples of what that evidence might be. An appellant may not simply make the assertion of error and leave it to the appellate court to figure out why. "[I]t is not this court's function to serve as . . . backup appellate counsel." (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 546.)

V

Sheline asserts the trial court failed to pay enough attention to him at trial. He faults the court for making a "needless rush to judgment" and giving him "very short shrift" in the hustle. He surmises, "The judge is the orchestrator at a trial, and not unlike a bandleader who just ignores an entire string or horn section in the fourth and final movement of a long symphony, time to be heard is the recourse that must be made to this appellant." He points to three "slights of the bench towards him during trial." We will address each one separately, finding no error.

(1) The court did not ask Sheline to make an opening statement.

Sheline did not make an opening statement when the trial started in March 2002, or when the trial was restarted a few months later in June. He blames this failure on the trial court, suggesting the judge was in too much of a hurry to ask for his "prefatory remarks." After reviewing the record, we find no fault with the trial court's conduct.

In March the trial started with Thomas Dominick introducing himself as Starmann's counsel. Next, Harrison stated he was "appearing for the conservator. And the conservator is Mr. Calvin Sheline and Susanne Horton. Both are present." Sheline said nothing. The court then began discussing the witness list, asking who would be called. Only Dominick and Harrison responded to the court's questions. Next, the parties discussed Starmann's request for judicial notice. Again, only the attorneys actively participated in the discussion. When the matter was resolved, the court stated, "All right. We will get to it then. All right. And either counsel wish to give an opening statement?" Dominick stated he would "submit on the briefs." Harrison said he would give an opening statement, and discussed Horton's defense. He also noted Sheline did not live in California, and was here "to explain each and every expenditure." Sheline said nothing.

When the trial resumed in June, Harrison introduced himself and stated he was appearing for Horton and Sheline. Finally, Sheline spoke up and advised the court he was appearing in propria persona. He then asked the court if his father could be called as a witness. The court noted he was not on the witness list, but generously granted Sheline's request. The court then started the trial with Starmann's witnesses.

Citing to *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, Sheline suggests the court should have directly asked him if he wished to make an opening statement. He asserts he is not seeking preferential treatment, but such an inquiry would ensure he was receiving the same legal opportunities as the other represented litigants. We do not believe *Gamet* places such a burden on the trial court.

In *Gamet* a different panel of this court noted, "[I]n propria persona litigants are not entitled to any special treatment from the courts. [Citation.] But that doesn't mean trial judges should be wholly indifferent to their lack of formal legal training." (*Id.* at p. 1285.) The court noted in propria persona litigants are "entitled to treatment equal to that of a represented party. Trial judges must acknowledge that in propria persona

litigants often do not have an attorney's level of knowledge about the legal system and are more prone to misunderstanding the court's requirements. When all parties are represented, the judge can depend on the adversary system to keep everyone on the straight and narrow. When one party is represented and the other is not, the lawyer, in his or her own client's interests, does not wish to educate the in propria persona litigant. The judge should monitor to ensure the in propria persona litigant is not inadvertently misled, either by the represented party or by the court. While attorneys and judges commonly speak (and often write) in legal shorthand, when an in propria persona litigant is involved, special care should be used to make sure that verbal instructions given in court and written notices are clear and understandable by a layperson." (*Id.* at p. 1284.)

In this case, it cannot be said Sheline misunderstood the appropriate timing or purpose of an opening statement. We recognize Sheline may not have realized that he had a right to make an opening statement when the trial first began in March. After all, Starmann's counsel decided not to make an opening statement and Hoffman's remarks were quite short. However, Sheline was given a second chance when the trial began again in April. He was able to tell the court that he was representing himself and wanted to add a new witness. He had ample opportunity to inquire about when to make his opening remarks, but said nothing.

We cannot fault the trial court for not directly asking for Sheline's opening statement. As pointed out by Starmann, there is no authority stating a party has a right to make an opening statement. Code of Civil Procedure section 607 provides a defendant may "state his defense" immediately after the plaintiff's opening statement or "if he so wishes" he may "wait until after plaintiff has produced his evidence." It was reasonable for the court to presume Sheline, like Starmann, was waiving an opening statement. Sheline had much to gain in his defense by following Starmann's lead. Both parties wanted to blame Horton, who was primarily responsible for the estate's losses. While a court should ensure an in propria persona litigant is not mislead, for obvious reasons it

need not play the role of second chair and opine on the best defense strategy. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

(2) The court did not ask Sheline if he wanted to testify on his own behalf when Sheline was presenting his case-in-chief?

Sheline asserts that the court broke a "promise" it made "just before a lunch break on the last full day of testimony," to allow Sheline to testify and present his case. This contention is belied by the record.

The trial began with Starmann calling Horton and then Sheline to testify. After Sheline was questioned by Starmann and Horton, the court noted Sheline had the "right to testify in his own behalf, not just through questions of others." However, it was understood that the trial would adjourn early that day because Hoffman's daughter was ill.

On the next day of trial, Starmann continued presenting her case, calling two more witnesses before resting. Next, it was Horton's turn to present her defense, and she asked her two daughters to testify. After Horton rested, the court directly asked Sheline, "Do you have any witnesses to call?" Sheline asked his father to take the stand and questioned him. After his father was cross-examined, Sheline stated he had no further questions. The court then asked Sheline if he had any other witnesses and Sheline replied, "No." When the court asked if he was ready to "rest as well," Sheline requested time to make a closing statement." The court said, "Yes."

It is apparent from the record that Sheline was given the opportunity to present his case. The court advised Sheline that he had the right to testify in his own behalf. This was not a promise, but rather only a statement of legal procedure. We find no authority for Sheline's contention the court had a sua sponte duty to ask Sheline to testify on his own behalf. His testimony was optional, not compulsory. Trial courts need not help in propria persona litigants weigh the pros and cons of testifying. Indeed, to offer such advice would breach their duty to treat all litigants (represented and

unrepresented) equally. (*Rappleyea v. Campbell, supra,* 8 Cal.4th at p. 985 [to require or permit "exceptional treatment" of in propria persona litigants "would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation"].)

In this case, it was entirely reasonable for the court to assume Sheline decided not to testify because he had already gathered all the evidence he needed for his defense: In addition to his father's testimony and his cross-examination of Horton and Starmann, Sheline answered many questions on the witness stand about his level of involvement as a coconservator. And, on a final note, Sheline does not suggest on appeal what more he would have said if he had testified on his own behalf or how the professed evidence would have made a difference.

(3) Trial counsel reminded the court that Sheline wanted to cross-examine witnesses.

Sheline suggests that the only reason he was allowed to cross-examine Horton and Starmann is because at the beginning of the trial Horton's counsel reminded the court that Sheline was present and wanted to participate. Assuming for the sake of argument this is true, no damage was caused by this initial oversight. Although Sheline may have gotten off to a slow start, we found many examples in the record of Sheline actively participating in the proceedings. In the end, Sheline questioned many of the witnesses called to testify. On more than one occasion, the court told Sheline he could call any witness he wanted. He was allowed to question someone not previously designated on the witness list. In addition, Sheline along with counsel discussed with the court what exhibits should be entered into evidence, and Sheline gave a somewhat lengthy closing statement.

We believe Sheline's discontent with the trial court stems from his basic misunderstanding of the law governing conservatorships and his shock over the court's finding he is financially liable for his sister's misconduct. We find no indication in the record that the court did not give Sheline a fair opportunity to be heard and present his case.

VI

Sheline does not dispute that there was plenty of evidence supporting the court's finding Horton should be surcharged $209,649, which equates to the total loss she caused the conservatorship estate. Moreover, Sheline acknowledges "that he was remiss in [his] fiduciary duty to inquire" about his sister's activities. Nevertheless, "he vehemently resents imposition of a $175,637 surcharge on him."

Applying basic comparative negligence analysis, found in the Restatement Second of Torts, Sheline argues his negligence was minimal compared to Horton's misconduct. In addition, he asserts the court should have excused his nominal misdeeds because he: (1) lacked signature authority on any checks; (2) is Horton's brother which "buffered normal objectivity" and his affection for her "clouded" his "better judgment"; (3) lives out of state, has a busy CPA practice, and reasonably trusted the lawyer and Horton "had a handle on it"; and (4) did not receive any improper benefit from Horton's misdeeds. In short, Sheline fancies himself in the role of a mere "cosigner" on the paperwork (that qualified Horton to be a conservator) rather than in the duty-laden rule of a true coconservator. We find both a strong legal and ample factual basis supports the court's ruling.

We will first point out the obvious – this is not a simple negligence case and the general rules on apportioning liability between joint tortfeasors simply do not apply. The rules regarding the liability of coconservators are specifically provided for by statute. The Probate Code provides that one conservator is never strictly liable for the wrongful acts of the other conservator. (Prob. Code, § 2105.5, subd (a).) However, a conservator can only be held responsible if he: (1) "participates in a breach of fiduciary duty committed by the other . . . conservator. [¶] (2) . . . improperly delegates the administration of the estate to the other . . . conservator. [¶] (3) . . . approves, knowingly acquiesces in, or conceals a breach of fiduciary duty committed by the other . . . conservator. [¶] (4) . . . negligently enables the other . . . conservator to commit a breach

of fiduciary duty. [¶] (5) . . . knows or has information from which [he] reasonably should have known of the breach of fiduciary duty by the other . . . conservator and fails to take reasonable steps to compel the other . . . conservator to redress the breach." (Prob. Code, § 2105.5, subd (b).)

When a conservator breaches his or her fiduciary duty, the conservator is "chargeable" for "any loss or depreciation in value of the estate resulting from the breach of duty, with interest." (Prob. Code, § 2401.3.) And, because the coconservators in this case were required to obtain a joint bond, any liability on the bond is joint and several. (Prob. Code, § 2326.) The code provides one escape hatch: "If the . . . conservator has acted reasonably and in good faith under the circumstances as known to the . . . conservator, the court, in its discretion, may excuse the . . . conservator in whole or in part from liability [described above] if it would be equitable to do so." (Prob. Code, § 2401.3.)

In light of the above rules, it appears Sheline's issue is not with respect to the sufficiency of the evidence supporting the surcharges, but rather the court's refusal to exercise its discretion and excuse Sheline from liability. (Prob. Code, § 2401.3.) Without a doubt, Sheline was liable under the Probate Code rules for the losses Horton caused the estate because he admitted below (and on appeal) that he breached his fiduciary duty by failing to "inquire" into Horton's activities. (Prob. Code, § 2105.5, subd. (b)(4).) He recognizes that he "improperly delegated the administration of the estate" to his sister and their attorney. (Prob. Code, § 2105.5, subd. (b)(2); see *Estate of Guiol* (1972) 28 Cal.App.3d 818, 825-826 [while attorneys or others may be employed to protect an estate, the personal representative remains liable for all losses].) Under the Probate Code's rules, these concessions render Sheline chargeable for losses to the conservatorship estate.

It cannot be said the court abused its discretion in this case in surcharging Sheline. The total loss to the estate was $209,649. The court partially excused Sheline

from liability, holding him jointly and severally liable for only $175,637. It reasoned, "He had knowledge of at least some of the unauthorized activity of Mrs. Horton including the transfer of the estate automobile to him and payment of in excess of $2,000 to him for purported accounting services. He is a CPA, [and] would be especially knowledgeable in his duties as a fiduciary from the time of his appointment as coconservator and duty to inquire himself into his sister's activities as coconservator. [¶] Both . . . Horton and . . . Sheline spent considerable time studying the conservator's handbook . . . and both knew what duties and responsibilities were imposed upon them on their appointment as coconservators."

The record shows the court was aware it had the discretion to relieve Sheline of liability pursuant to Probate Code section 2401.3, but determined the section inapplicable. It reasoned there was no basis to find "Sheline acted reasonably and in good faith" when he allowed his sister to cost the estate substantial losses "in both cash assets and interest that would have been earned, not to mention the cost of pursuing this litigation. . . . [¶] Mr. Sheline knew from the beginning that his sister could not be bonded without his becoming a coconservator. That fact alone should have alerted him that his sister was a risk and he should . . . keep a close watch on her activities. [¶] He claimed attorney Harvey was never his attorney although he . . . relied on the accountings filed by his sister through Mr. Harvey's office, [and] . . . he did nothing to verify what his sister provided to the . . . attorney was accurate or not. [¶] . . . [¶] After Mr. Harvey's withdrawal, [Sheline] did receive direct notice of objection by relatives of Mr. Paulson. He did nothing to monitor . . . Horton's activities while Mr. Paulson was alive, did nothing to inquire as to [her] final account after Mr. Paulson's death . . . and little, if anything, to verify her account information provided to attorneys or to this court."

We do not find these conclusions to be unfair or unreasonable. We agree with the trial court's observation that when Sheline was appointed coconservator he understood that his sister did not qualify to do the job alone. The trial court trusted

Sheline would keep his promise to actively participate in managing and protecting the conservatee's estate. If Sheline had any doubts about his ability to adequately serve, he had the obligation to alert the court or formally withdraw as a conservator. To have allowed Sheline to surrender all his duties without becoming responsible for any losses would totally negate the purpose of having coconservatorships and the underlying bonding requirements.

Sheline's last argument regarding the sufficiency of the evidence relates to how the court determined his share of liability. Sheline poses the question, "What is the source of the" surcharge judgment against him. He claims "an objective 'improper benefit'" analysis would show his wrongful "taking" amounts to a little over $1000 because he should be compensated for performing "some CPA tasks for the Conservatee." He fails to appreciate the scope of his potential liability.

In making its ruling, the court took a great deal of time to explain in detail the different "sources" of the total surcharge. It began by describing over 13 types of financial transactions in which Horton breached her fiduciary duty and misappropriated the estate's funds. Sheline does not dispute these findings.

The record shows that when calculating Sheline's surcharge it correctly differentiated between losses suffered when Horton acted alone, as the temporary conservator, and the time Sheline was appointed to serve as her permanent coconservator. The court calculated that as temporary conservator, Horton misappropriated $34,887. However, it concluded Sheline would only be surcharged for $875 of those losses, which represented "the $75 payment to him and the appraised value of the automobile taken by him during the temporary conservatorship." Sheline fails to suggest how these calculations were unfair or unsupported by the evidence. The $875 represents an improper benefit he received.

However, as discussed above, Sheline is also chargeable under the Probate Code for losses caused solely by Horton under his watch as coconservator. The court

calculated a total loss of $174,762 for this period of time and gave Sheline a $500 credit for some of the tax work he performed. The court concluded "as to Calvin Sheline the total surcharge is the amount found by the court to be $174,762 during the permanent coconservatorship plus $875 charged to him during the temporary conservatorship or $175,637." We find no error.

The judgment is affirmed. Respondent shall recover her costs on appeal.

O'LEARY, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.